

IMMIGRATION OF AN ALIEN SPOUSE

1. If I get married overseas, how do I get a visa for my spouse to come live with me in the United States?

If you (the petitioner) are a U.S. citizen, your spouse is an "immediate relative" and may be eligible for an immigrant visa right away. If you are a lawful permanent resident (a 'green card' holder) your spouse's visa availability will be determined under the numerical limitation categories. Otherwise, the application process is the same for both citizen and permanent resident petitioners. If there are no complications, the petition for a visa on behalf of your spouse may be processed as follows:

Step 1: File Form I-130 (Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa) with fee (\$80), and Form G-325A (Biographic Information--one for you and one for your spouse). Include the required photographs, and supporting documents (such as proof of termination of all prior marriages, proof of citizenship or permanent residency, and an official marriage certificate). The forms and supporting documents must be sent to the INS Service Center nearest you if you are Stateside, or if overseas, to the nearest American Embassy or Consulate where you reside. Once the visa petition is approved, it will be forwarded to the U.S. Consulate in the country where your spouse resides. The Embassy/Consulate will then mail your spouse a 'visa packet' with instructions for documents (such as current passport, birth certificate, any legal name changes, and Affidavit of Support), police clearances, and physical examination (the packet should include a list of State Department approved physicians for physicals).

Step 2: Your spouse will gather the necessary documents and return them to the Embassy/Consulate; he/she will then be scheduled for an interview. If the interview doesn't reveal any ineligibilities (such as criminal records, drug crimes, or prostitution) a visa valid for 4 months will be issued. (If some ineligibility does exist, he/she will be advised of any waivers that may be available).

Step 3: At this point, your spouse is ready to travel to the United States. Upon arrival in the U.S. s(he) will receive permanent residence status on a conditional basis as evidenced by a stamp in her(his) passport of a temporary alien registration card (I-551). In the past your spouse would have been admitted as a lawful permanent resident. However, under the Marriage Fraud Act of 1986, before the beneficiary receives permanent resident status, you must be married for at least two years either in the U.S. or prior to the entry of the beneficiary into the U.S.

Step 4: To remove the conditional status, you and your spouse must file Form I-751 (Joint Petition to Remove the Conditional Basis of Aliens's Permanent Resident Status) with fee (\$80), within 90 days of the second anniversary of the date s(he) receives conditional resident status. For example, if s(he) enters the U.S. and receives conditional resident status on January 1, 1992, the joint petition must be filed between October 1, 1993 and January 1, 1994. If the joint petition is not timely filed, your spouse will automatically lose resident status, by statute, on January 1, 1994. The application is filed directly with the INS Service Center nearest your residence. The Center may approve the application and mail an approval notice with instructions to appear at the nearest Immigration office to process for an I-551 (Alien Card) or you may receive a notice from INS advising you and your spouse to appear at a Service office for an interview. At the interview you will need to provide whatever evidence you may have to prove a bonafide marriage (it may include but is not limited to joint bank accounts, insurance policies, lease or purchase agreements, etc.); if approved your spouse will be processed for an I-551. Note: if a joint petition cannot be filed because the parties are no longer married or for other reasons, the alien may still apply to remove the conditional status by filing Form I-751.

2. My fiancé(e) is an alien without any papers to travel to the United States. How do I bring that person to the U.S. so that we can marry and s(he) can live in the U.S.?

First, only a U.S. citizen may bring a fiancé(e) to the U.S. for this purpose. The citizen must file Form I-129F (Petition on Behalf of Alien Fiancé(e)) with fee (\$75), Form G-325A, Form I-134, and two photos of each party. The petition must include evidence of U.S. citizenship as well as evidence the parties have met in person within two years of filing the petition and that they intend and are free to marry within 90 days of the fiancé(e)'s arrival in the U.S. Each party must submit documents to prove termination of all prior marriages. File the application direct with the nearest INS Service Center if Stateside or at the nearest U.S. Embassy/Consulate, if overseas. Once approved, the petition is sent to the U.S. Embassy/Consulate where the alien fiancé(e) resides. The petition is then processed in a manner similar to an immigrant visa; a K-1 visa is placed in the beneficiary's passport valid for 4 months. K-2 visas are issued the fiancé(e)'s minor children who are listed on the petition. Following admission into the U.S., the marriage must occur within 90 days and as soon as possible thereafter, the alien spouse must apply for "adjustment of status" described next.

3. I met and married a nonimmigrant alien while s(he) was lawfully in the United States. How do I get that person's status adjusted to that of a lawful permanent resident?

Whenever a citizen marries a nonimmigrant alien in the U.S., an application for adjustment of status must be filed with INS in order for the alien spouse to become a lawful permanent resident. The forms involved for adjustment of status include:

Form I-130 (Petition for Alien Relative) (Fee \$80.00)

Form I-485 (Application for Permanent Resident) (Fee \$130.00 or \$100.00 if under age 14)

G-325A (Biographic Information - 1 for each spouse)

Form I-693 (Medical Examination of Aliens Seeking Adjustment of Status)

FD 258 (Fingerprint Chart)

Form I-94 (Arrival-Departure Record issued at time of admission into the U.S. and stapled in passport; or evidence of admission in passport)

Photos (ADIT type for both spouses)

If your spouse entered the U.S. as a K-1 (Fiancee), s(he) and K-2 (dependent children) must file:

Form I-485 (Application for Permanent Resident)

Marriage Certificate

If you are a lawful permanent resident and marry an alien lawfully in the U.S., you may file an adjustment of status only if visa numbers are available at the time you wish to file. (Confer with the legal assistance office for visa availability).

The INS will schedule a mandatory interview for the beneficiary; the citizen spouse is highly recommended to be in attendance. Prior to the interview, the alien spouse must undergo a medical examination conducted by an INS-approved doctor. The parties should be prepared to show proof of a valid marriage and lawful entry by the alien into the U.S.. While the application for adjustment of status is being processed, the alien must apply for permission to travel abroad. Otherwise s(he) may not be able to reenter the U.S. and the application is automatically considered abandoned and a new application (with fees) would have to be filed.

If the interview reveals no ineligibilities, the alien will receive "conditional resident" status (unless the marriage has been in existence for more than two years, in which case the alien will be admitted as a full lawful permanent resident).

Permanent resident aliens are subject to taxation and military induction. They must report changes of address within 10 days. They may be deported if they are convicted of serious criminal offenses (aggravated felonies) such as drug smuggling, weapons violations, assault and other crimes against a person. When they travel abroad, they can be denied reentry into this country for any reasons that would make them deportable or inadmissible or fail to present the necessary reentry documents. In order for an alien to retain permanent resident status, his/her absence from the U.S. must be for 1 year or less, unless he/she is the spouse or child of a U.S. civilian employee or member of the Armed Forces abroad on official orders. Otherwise if the alien will be abroad more than 1 year s(he) must file an I-131 for a reentry permit at least 90 days prior to departure (Fee \$70.00). The reentry permit maintains your permanent residence status but may not preserve your residence requirement for naturalization.

Effective October 1, 1994, the INA amendment allowed certain previously ineligible individuals the option of applying for adjustment of status under section 245 of the INA. These individuals are persons physically present in the United States who are currently ineligible for adjustment pursuant to sections 245(a) and 245(c) of the INA. Many of these individuals, however, will only be eligible to apply for adjustment after payment of a sum five times the ordinary fee for adjustment of status. This sum will be added to the ordinary fee.

The following groups who are currently ineligible will now have the option of filing for adjustment of status:

- a. those who entered without inspection;
- b. alien crewmen;
- c. those previously barred from adjustment because of unauthorized employment;
- d. those previously barred because they had failed to maintain lawful status;
- e. those who originally entered under the Visa Waiver Pilot Program; and
- f. those who entered as transit without visa.

In order to adjust, an individual in one of the above categories must file an application (Form I-485) and pay the ordinary fee of \$130.00 plus a sum five times the fee (\$650.00) for Form I-485, Supplement A, for a total payment of \$780.00.

The following two groups of individuals are not required to pay the additional sum in order to apply, but must still pay the basic \$130 fee:

- a. anyone who is a child under the age of seventeen at the time of application; and
- b. those who are eligible for and have applied for benefits under section 301 of the Immigration Act of 1990 (The Family Unity provisions).

Although these individuals will continue to be able to file for immigrant visas at United States embassies and consulates abroad, the amendment places certain limitations on this ability. Thus, the amendment provides that an alien who have been physically present in the United States will not be eligible to receive an immigrant visa within 90 days following departure from the United States unless:

- a. the alien was maintaining a lawful nonimmigrant status at the time of departure; or
- b. the alien is eligible for and has applied for benefits under section 301 of the Immigration Act of 1990 (the Family Unity provisions).

4. How do children from a previous marriage or relationship of my alien spouse obtain immigrant visas or permanent resident status?

If the parent is to be admitted under a preference category (the petitioner is a lawful permanent resident), then the children will be admitted derivatively without separate petitions. If the parent is being admitted or adjusted as a spouse of a U.S. citizen, then separate visa (I-130 and I-485) applications must be filed for each child. For the children to be eligible, in both instances, the marriage must have occurred prior to the 18th birthday of the child.

DEFINITIONS

1. Aliens: An alien is any person who is not a citizen of the United States. Aliens are classified as immigrant or nonimmigrant. An immigrant alien is one who has been admitted for permanent residency ("Green" card holders). A nonimmigrant alien enters this country for a limited purpose and length of time, for example as a visitor, student, or temporary worker. The only exception to the definition of "nonimmigrant" is for an alien fiancé(e) who is a nonimmigrant but may remain permanently in the United States after marrying the petitioning U.S. citizen (and filing for adjustment). NOTE: Only U.S. citizens may petition for fiancé(e) to marry in the U.S.

2. Citizens: Anyone born in the 50 United States, Guam, Puerto Rico, or the U.S. Virgin Islands. A person born outside these areas may become citizen through naturalization or derivatively through his/her U.S. parent(s). Under the U.S. constitution all citizens, whether by birth or naturalized, enjoy the same rights and privileges.

3. Child: A child is an unmarried person under 21 years of age who is a legitimate child, stepchild (if the marriage to the parent occurred prior to the child's 18th birthday), legitimated child, illegitimate child, adopted child, or orphaned child. However, an adopted child must have been adopted before age 16 and except for an adopted orphan, must have been in the legal and physical custody of the adopting citizen parent(s) for at least two years prior to the filing of any I-130 visa petition.

4. Immediate Relatives: An immediate relative is a spouse, a parent, or an unmarried child under 21, of a U.S. citizen; (the citizen must be at least 21 years of age to file for a parent). Immediate relatives are eligible for visa issuance immediately without regard to the numerical limitations. Spouses, parents, and children of permanent resident aliens are not eligible as immediate relatives; aliens may file for spouses and unmarried sons and daughters.

5. Preference Aliens Relatives: Any alien relative immigrant subject to the numerical limitations established by Congress. These include: the unmarried (under 21) sons and daughters of U.S. citizen, married or over 21 sons and daughters of a U.S. citizen, spouses and unmarried sons and daughters of lawful permanent residents (including conditional residents), and the brothers and sisters of U.S. citizens.

(With the recent change in law by IMMACT 90 check with legal assistance or U.S. Immigration for availability of visa numbers).

6. Where can I obtain Immigration Forms?

Forms may be obtained by called (408) 535-5195 (it is a recording so be patient) or by visiting the San Jose INS Office at 280 South 1st St., San Jose between the hours of 07:30 AM - 3:00 PM. The Legal Assistance Office Building 275, Plummer St., Defense Language Institute, Presidio of Monterey can provide information on immigration laws and the application process by appointment (408-242-5084). However, unless there is a statutory or regulatory basis for treating your application differently, this office cannot help expedite the application process or influence INS decisions on your behalf.

7. Where do I send my Immigration Forms?

If you are filing for adjustment of status (Form I-485 and related documents) bring your forms to U.S. Immigration at 280 South 1st St., San Jose, Monday thru Thursday between 7:30 AM -3:00 PM; to file for lost alien cards or advance parole, appear at above address Monday thru Friday (same hours); I-130 visa petitions and I-129F (fiance(e)) petitions should be filed directly to U.S. Immigration Service, Western Service Center, P.O.; Box 30115, Laguna Niguel, CA 92677-8115 (Send Attn: I-130 unit or I-129F unit). Extension of nonimmigrant visas should be mailed to: USINS Western Service Center, P.O. Box 10539, Laguna Niguel, CA 92607-0539. Reentry permit should be mailed to: INS/Northern Service Center, P.O. Box 87131, Lincoln, NE 68501-7131.

Assistance on a variety of immigration and citizenship questions is available through the INS applications support center at 1396 N. Main Street in Salinas. The center is has an INS supervised fingerprinting office. For more information, call (408) 918-4000.